IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.02.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

S.A.No.514 OF 1996

A.Sathar .. Appellant/Defendant.

vs.

Kumaraswamy Mudaliar .. Respondent/Plaintiff.

PRAYER : This Second Appeal has been filed against the judgment and decree of the Subordinate Judge at Kancheepuram, dated 6.4.1992, in A.S.No.22 of 1990 against the decree of the Court of the Addl. District Munsif, Kancheepuram dated 2.11.89 in OS.No.656/85.

For Appellant : Mr.S.D.N.Vimalanathan
For respondent : M/s.S.Balasubramanian

J U D G E M E N T

This second appeal has been preferred against the judgment and decree of the Subordinate Judge at Kancheepuram, dated 6.4.1992, made in A.S.No.22 of 1990.

2. The defendant in the suit O.S.No.656 of 1985 is the appellant in the present second appeal. The plaintiff in O.S.No.656 of 1985 had prayed for a decree for a sum of Rs.6,373/- with future interest at 6% per annum on Rs.6,300/- from the date of filing of the suit till the date of the realisation of the suit claim and for costs of the suit.

3. Heard the learned counsel appearing for the appellant and the respondent.

4. The brief facts of the case, as stated by the plaintiff in the said suit, are as follows:

The plaintiff is having two sons and daughters and the eldest son was one Gunasekaran. The said Gunasekaran got himself separated from the family of the plaintiff and he was living separately for more than nine years. He has been doing his weaving operations and looking after his own affairs and he is running a separate family. Gunasekaran had died suddenly, on 20.5.1985, leaving behind his widow. There has been no joint family between the plaintiff and the said Gunasekaran and there was no family estate or any nucleus. Gunasekaran had not left any estate, when he died.

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It has been further stated by the plaintiff that the said Gunasekaran was conducting chit transactions in the village by collecting subscriptions and conducting auction. The plaintiff has not been a party to any of the chit transactions. The defendant in the suit is said to have been a subscriber in the said chit run by Gunasekaran. While so, the defendant had given a police complaint against the plaintiff and the plaintiff had been brought before the Inspector of Police, Uthiramerur and by using threat and force the defendant had collected a sum of Rs.6,300/- from the plaintiff, on 7.7.1985, alleged to be an amount due to the defendant from Gunasekaran. Fearing for his life, the plaintiff had paid a sum of Rs.6,300/- to the defendant, even though the plaintiff did not owe any money to the defendant. The plaintiff is not even a class I legal heir of the deceased Gunasekaran nor had he derived any estate from the said Gunasekaran.

The plaintiff had issued a notice to the defendant, on 9.7.1985, questioning the illegal and high handed act of the defendant. The defendant had sent a reply, on 19.7.1985, alleging that it was only the plaintiff, who was carrying on the chit transactions, contrary to the statement made and signed by the defendant, on 7.7.1985. The plaintiff had issued a rejoinder, on 5.8.1985, denying the allegations.

5. In the written statement filed by the defendant, the contentions of the plaintiff were denied. The defendant had stated that all the claims and the allegations made by the plaintiff were flase and incorrect.

The defendant had further stated that the chit was conducted only by the plaintiff and that the plaintiff had owed money to several other persons also. The plaintiff has been running the chit transactions lawfully. However, the defendant and some others had given a police complaint against the plaintiff for cheating and defrauding. Therefore, the plaintiff had agreed to pay the entire sum due to all the parties by 31.7.1995. It was only the plaintiff, who was threatening the defendant and others who had requested the plaintiff to discharge his liability. The plaintiff had also discharged some of the amounts due to various persons in the presence of the Panchayat members. Therefore, the allegations of the plaintiff that he was threatened and the money was taken from him by the defendant is totally untrue and false. It has also been stated that the defendant does not owe any money to the plaintiff.

6.Based on the rival contentions, the trial Court had framed the following issues for determination:

> "(1) Whether the defendant by exercise of intimidation and by compelling has received any amount from the plaintiff?
>
> (2) Whether the plaintiff is entitled to claim the return of the amount due from the defendant?
>
> (3) To what other reliefs the plaintiff is entitled?

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7. On behalf of the plaintiff Exhibits A1 to A4 were marked and P.W.1 and P.W.2 were examined. Exhibit B.1 was marked on behalf of the defendant and D.W.1 to D.W.3 were examined on his behalf.

8. The trial Court, while analysing the issues, has found that the plaintiff has not produced the First Information Report or complaint in support of the contention that the defendant had given a police complaint and that the Police had arrested and intimidated the plaintiff, on 7.7.1985 and collected the amount, in question and handed over the same to the defendant. Therefore, the trial Court had found that there was no intimidation or compulsion by the Police in payment of the amount as alleged by the plaintiff. The plaintiff had not complained of such intimidation to the higher officials in the police force. Though the plaintiff had stated that no amount was due personally to the defendant and that the amount payable by the plaintiff's son was not payable by him, as he was not the class I legal heir and that he did not keep any property of his son, the trial Court has found that in the course of the cross-examination, the plaintiff had stated that there was no partition of the properties and there was no proof for separate living and that there was no release deed and that the house Tax demand was in the name of Gunasekaran. However, no demand notice had been filed. It was found that the plaintiff and his deceased son, namely, Gunasekaran are members of the joint family. Further, the plaintiff has not denied the conduct of the chit by his son. Since the plaintiff and his son are members of the joint family, what was denied is the conduct of the chit by the plaintiff and his son. It was found that since the chit had been conducted by the plaintiff's son and since both of them are members of the joint family, the plaintiff was also liable. During the course of Cross-examination, the plaintiff had stated that he had paid the amounts due and payable by his son under the chit. Therefore, the trial Court had found that the plaintiff and his son had conducted chit and only the amounts payable by them had been paid. The evidence of D.W.2 and D.W.3 had confirmed the same. D.W.2 had stated that he had contributed the amount to the chit conducted by the plaintiff and his son and 60% of the amount owed by them to various persons had been paid in the village panchayat. D.W.3 had also deposed in his evidence that 60% of the amount had been discharged. Further, there was no proof for the allegation that a sum of Rs.6,300/- was collected from the plaintiff, on 7.7.1985, by using threat and undue influence. Further, it had been stated that Rs.6,300/- had been paid during the panchayat, even if it is held to be in the presence of Inspector of Police, Uthiramerur. It was held that there has been a panchayat in the Police Station and that the amount has been received from the plaintiff. Having so found, the trial Court had decided the other issues also in favour of the defendant and dismissed the suit. Therefore, the plaintiff in the suit had filed the first appeal in A.S.No.22 of 1990 against the judgement and decree in O.S.No.656 of 1985, dated 28.11.1989. Based on the rival contentions of the parties, the first appellate Court had framed the following issues for determination in the first appeal.

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"(i)Whether the plaintiff/appellant is entitled to the suit amount?
(ii)To what other reliefs that the appellant is entitled to."

9. The appellate Court had reversed the findings of the trial Court by stating that in the evidence of the defendant in which he had stated that the amount was received in the Police Station and Ex.A.4 is the receipt for the amount paid and it had been issued in the police Station. In Ex.A.4, it is stated that, on 7.7.1985, a sum of Rs.6,300/- has been received and a sum of Rs.1,377/- was received separately. The defendant had signed in the same and admitted that the receipt was given by him. Therefore, the defendant had admitted that he had received the amount in the presence of the Inspector of Police, Uthiramerur. Further, D.W.2 had stated that the amount payable was decided in the Panchayat and it had been paid near the Milk Booth. D.W.3 had stated that no compliant was given by the defendant and that he does not know as to what had happened in the Police Station. The defendant had admitted that the plaintiff had cheated in the chit transactions and that he had given a complaint and the same was not registered. If such a complaint had been given, it ought to have been enquired after registering of a First Information Report. It is seen that no First Information Report had been registered and no action had been taken. On the contrary, the amount of Rs.6,300/- was paid to the defendant by the plaintiff in the presence of the Inspector of Police, Uthiramerur. It cannot be held that the plaintiff had voluntarily paid the said amount, since the said amount was paid in the presence of the Inspector of Police, Uthiramerur. Therefore, it has to be inferred that the amount has been paid on account of compulsion. The appellate Court had found that the trial Court had not taken into consideration the fact that the defendant had not proved by documents or otherwise that the amount of Rs.6,300/- was due to him. If the plaintiff owes any amount, the defendant should have filed a suit for recovery of the amount. Giving a complaint before the Police to recover the amount was not acceptable. Therefore, the first appellate Court had set aside the decree and judgment of the trial Court and against which the present second appeal has been filed.

10. The present second appeal has been admitted on the following substantial questions of law arising for consideration:

"1) Whether the first appellate Court was right and justified in law in reversing the judgment and decree of the trial Court without dislodging the reasons given by the trial Court and that too placing the burden of proof wrongly on the defendant?

2) Whether the first appellate Court was right and justified in law in not considering the material evidence on record?"

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11. The appellant in the second appeal, who was the defendant in the suit, has filed the appeal stating that the lower appellate Court had failed to note the admissions of P.W.1 and the evidence of D.W.2 and D.W.3. Further, the lower appellate Court had failed to note that no money was paid in the presence of the Police and it was wrong to hold that the money was paid by the plaintiff/respondent only under compulsion.

12. On a perusal of the documents placed before this Court and on analysing the rival contentions of the parties concerned, this Court is of the considered view that the Judgment and Decree passed by the Lower Appellate Court reversing the findings of the trial Court cannot be sustained. The Lower Appellate Court had come to its conclusions based on its inference that the amount paid by the plaintiff to the defendant was by way of compulsion, as it was done in the presence of the Inspector of Police, Uthiramerur. However, it is seen that sufficient evidence has not been produced by the plaintiff to show that the amount paid by him to the defendant under compelling circumstances by use of force, threat or harassment. On the other hand, there is sufficient evidence for this Court to come to the conclusion that the trial Court was right in dismissing the suit filed by the plaintiff. The amount said to have been paid by the plaintiff to the defendant in discharge of the liabilities incurred by the plaintiff and his son Gunasekaran is in pursuance to the settlement arrived at by the members of the panchayat. In such circumstances, the conclusion arrived at by the Lower Appellate Court in its Judgment and Decree, dated 06.04.1992, in A.S.No.22 of 1990, cannot be held to be valid. Therefore, for the reasons stated above, the second appeal stands allowed. Parties to bear their own costs. Consequently, the connected C.M.P.No.5269 of 1996 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1. The Subordinate Judge
Kancheepuram

2. The Additional District Munsif,
Kancheepuram.

3. The Record Keeper, VR Section, High Court, Madras.

+ 1 CC To Mr. S.Balasubramanian, Advocate SR NO.11324

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